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## The Trump Administration's Impact on F-1 and J-1 Visas

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The Trump Administration's Impact on F-1 and J-1 Visas  
*Laura Caty<sup>1</sup>*

President Donald Trump is known throughout the world for continuously promoting “the wall” between Mexico and the United States. Since his inauguration in 2016, President Trump has pushed the legislature to fund construction of a physical barrier on the southern border of the United States. Not only is the wall an actual construct, but the wall also represents his entire approach to immigration law. Mexican residents are not the only ones suffering from the Trump administration's policies. While targeting Southern neighbors and undocumented or “illegal” immigrants, Trump has also created difficulties across the entire visa process for legal immigrants. Individuals in countries across the world now are dealing with increased uncertainties in working in America. It is becoming increasingly more difficult for legal immigrants holding J-1 and F-1 visas to enter the United States, which is having a profound effect on the United States' ability to recruit talent and increase innovation.

Although the United States government utilizes the term “alien” in documentation, the correct term when discussing J-1 and F-1 visa holders is “non-immigrant.” A non-immigrant is defined as “a person who has been lawfully admitted to the United States for a specific purpose for a temporary stay that will end when its purpose has been accomplished and the visa expires.”<sup>2</sup> The government's use of “alien” tends to incorrectly portray immigrants as inhuman and coming to the United States “with questionable motives.”<sup>3</sup>

A non-immigrant is also distinguished from an immigrant. An immigrant is someone who came to “live permanently in a

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<sup>1</sup> Associate Member, (2019) Immigration & Human Rights Law Review

<sup>2</sup> *Glossary of Immigration Terms*, Freedom for Immigrants, <https://www.freedomforimmigrants.org/terminology>.

<sup>3</sup> *Id.*

country” and “has been granted legal status to stay in a country.”<sup>4</sup> The difference between a non-immigrant and an immigrant is solely the determination of time.<sup>5</sup> A non-immigrant is only authorized to remain in the United States for a specific period of time.<sup>6</sup>

### **The Exchange Visitor Program: J-1 and F-1 visas**

The United States Department of State created the Exchange Visitor Program to enable students to contribute to the growth of the United States and share their culture with U.S. host communities.<sup>7</sup> When international students enter the United States, they typically apply for one of the following three visas: F-1, J-1, or M-1.<sup>8</sup> The government defines “an F-1 student’s primary purpose for coming to the United States is to complete a full time program of study at any grade level at a Student and Exchange Visitor Program certified school.”<sup>9</sup> The J-1 visa students must “pursue a full course of study only at a postsecondary, accredited academic institution in the United States.”<sup>10</sup>

The J-1 and F-1 visas have several similarities. J-1 and F-1 visas overlap in the categories of people they seek to recruit. J-1 program categories include professors and research scholars,

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<sup>4</sup> *Id.*

<sup>5</sup> *Id.*

<sup>6</sup> *Id.*

<sup>7</sup> *Exchange Visitor Program*, The United States Department of State, <https://j1visa.state.gov/wp-content/uploads/2019/02/Exchange-Visitor-Program-Fact-Sheet.pdf>.

<sup>8</sup> *Other U.S. Student Visas, Exchange Visitor Program: on a J-1 Visa*, U.S. Department of State: Bureau of Educational and Cultural Affairs, <https://j1visa.state.gov/basics/other-u-s-visas/>.

<sup>9</sup> *Studying at U.S. Universities and Colleges: F-1 versus J-1 Visas*. U.S. Department of State: Exchange Visitor Program, <https://j1visa.state.gov/basics/other-u-s-visas/studying-at-u-s-universities-and-colleges-f-1-versus-j-1-visas/>.

<sup>10</sup> *Id.*

trainees such as professionals with degrees, college and university students, secondary school students, au pairs, and “alien” physicians.<sup>11</sup> F-1 visas apply for students coming to the United States for participation in full time degree or academic programs.<sup>12</sup> Both F-1 and J-1 visa holders are allowed part time employment on campus.<sup>13</sup>

When selecting between a J-1 and F-1 visa, students need to be aware of the significant differences that could have consequences later depending on the law. For one, an F-1 visa holder is not expected to have a large portion of their funding come from an outside source.<sup>14</sup> Therefore, these students draw upon scholarships and outside aid to pay for schooling in the United States. J-1 visas, on the other hand, are expected to have more than 50 percent of their money coming from outside sources.<sup>15</sup> More significantly, the J-1 visa has a more difficult requirement to show proof of funding. A J-1 visa holder must show proof of funding “for the entire duration of his/her academic program.”<sup>16</sup> F-1 visa holders must only show proof of funding for the first year.<sup>17</sup>

Another difference between F-1 and J-1 visa holders is the ability to access employment during the student’s stay.<sup>18</sup> J-1 visa

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<sup>11</sup> *Exchange Visitor Program*, The United States Department of State, <https://j1visa.state.gov/wp-content/uploads/2019/02/Exchange-Visitor-Program-Fact-Sheet.pdf>.

<sup>12</sup> *Other U.S. Student Visas, Exchange Visitor Program: on a J-1 Visa*, U.S. Department of State: Bureau of Educational and Cultural Affairs, <https://j1visa.state.gov/basics/other-u-s-visas/>.

<sup>13</sup> *Id.*

<sup>14</sup> *Student Visa: F-1 versus J-1*, University of Michigan Student Life International Center, <https://internationalcenter.umich.edu/f1-versus-j1-student-visa>.

<sup>15</sup> *Id.*

<sup>16</sup> *Id.*

<sup>17</sup> *Id.*

<sup>18</sup> *Student Visa: F-1 versus J-1*, University of Michigan Student Life International Center, <https://internationalcenter.umich.edu/f1-versus-j1-student-visa>.

holders can work only if they are authorized.<sup>19</sup> F-1 visa holders have more discretion in seeking work. Also, the main difference between the two visas is illustrated during terms of recess.<sup>20</sup> Recess is the time in which a student is not currently enrolled in an academic program, but has not finished their academic program. An example would be the summer between the spring semester and fall semester in college. J-1 visa holders may need permission to work full time, whereas F-1 visa holders do not.<sup>21</sup> This has consequences for the student who may need the employment to support their time in the United States.

Additionally, dependents for F-1 visa holders versus J-1 visa holders enjoy different opportunities. F-1 dependents are called F-2 visa holders and J-1 dependents are called J-2 visa holders.<sup>22</sup> F-2 visa holders can study part-time not but do not enjoy the ability to find employment. J-2 visa holders can both study and apply for employment.<sup>23</sup>

J-1 visa holders and F-1 visa holders have a different support system for maintaining their status while in the United States. An F-1 visa holder has a designated school official. J-1 visa holders have a designated program sponsor, called a Responsible Officer. These officers are in organizations designated by the U.S. Department of State. These programs take a more active role than the F-1 support system by “monitor[ing] the health, safety, and welfare of the students.”<sup>24</sup>

J-1 and F-1 visas were authorized by the Secretary of State in order to facilitate the exchange of cultures from students across

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<sup>19</sup> *J-1 vs. F-1 Visa*, SGM Law Group (November 7, 2018), <https://www.immi-usa.com/j1-vs-f1-visa/>.

<sup>20</sup> *Student Visa: F-1 versus J-1*, University of Michigan Student Life International Center, <https://internationalcenter.umich.edu/f1-versus-j1-student-visa>.

<sup>21</sup> *Id.*

<sup>22</sup> *Id.*

<sup>23</sup> *Id.*

<sup>24</sup> *Id.*

the United States. However, due to the changes in immigration policies between presidencies, this cultural exchange is compromised.

### **President Trump's Immigration Policy**

Despite the differences between J-1 and F-1 visa holders, the Trump Administration impacts both categories of students. The enactment of several executive orders as well as the change in policy threatens the United States' ability to recruit talent. Specifically, J-1 and F-1 visa holders are not as welcome and are exposed to a greater chance of criminal and civil penalties compared to prior administration policies. These policies do not revolve around criminal activities, but a mere lapse in status.

In 2017, President Trump signed an executive order titled *Enhancing Public Safety in the Interior of the United States*.<sup>25</sup> This executive order set the tone for the administration's stance on immigration throughout Trump's presidency. The Executive Order also set the stage for the United States Citizenship and Immigration Services' (USCIS) policy memorandum issued in August 2018. In Section One of the Executive Order, President Trump cautioned, "many aliens who illegally enter the United States and those who overstay or otherwise violate the terms of their visas present a significant threat to national security and public safety."<sup>26</sup> The executive order threatened that if jurisdictions did not follow the executive order, their federal funding would be limited.<sup>27</sup> The order failed to realize the incredible contributions people who may overstay their visas bring to the United States.

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<sup>25</sup> Executive Order: *Enhancing Public Safety in the Interior of the United States*, *Executive Orders* (January 25, 2017), <https://www.whitehouse.gov/presidential-actions/executive-order-enhancing-public-safety-interior-united-states/>.

<sup>26</sup> *Id.*

<sup>27</sup> *Id.*

While Trump used the terms “aliens”, he also extended the policy to non-immigrants. His broad categorization of a class of people coming to the United States threatens the country he claims to protect. The word “alien” should not apply to J-1 and F-1 policyholders because these students are in the United States legally. As mentioned previously, the word “alien” tends to raise ideas of people who are inhuman and criminal. He likens both “aliens” and those who overstay their welcome as threats to national security. Those who cross the border illegally and are involved in criminal activity could not be further from students who overstay their visa.

Despite the overbroad language of this order, the effect of the Executive Order *Enhancing Public Safety in the Interior of the United States* demonstrated the strength of the American people and the commitment to cultural diversity in our nation. The administration’s threat of limiting funding for jurisdictions backfired as cities such as Boston and San Francisco reaffirmed their status as “sanctuary cities” and set a precedent for welcoming immigrants. For example in Boston, the mayor announced that Boston would not support “misguided federal actions” with government resources.<sup>28</sup>

Months later, the U.S. Circuit Court of Appeals for the Ninth Circuit ruled the Executive Order 13768 unconstitutional, as “the Executive Branch may not refuse to disperse the federal grants without congressional authorization.”<sup>29</sup> Although there was a positive state and federal government response towards the protection of immigrants, the President’s enactment of this

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<sup>28</sup> Serena Parekh and Martha Davis, *Boston’s Sanctuary City Protections: A Philosophical Perspective*. Northeastern University School of Law (2018), [https://papers.ssrn.com/sol3/papers.cfm?abstract\\_id=3208803](https://papers.ssrn.com/sol3/papers.cfm?abstract_id=3208803).

<sup>29</sup> Lindsay Offutt, *Federal appeals court: executive order denying funding to ‘sanctuary cities’ unconstitutional*, Jurist (2018), <https://www.jurist.org/news/2018/08/federal-appeals-court-executive-order-denying-funding-to-sanctuary-cities-unconstitutional/>.

Executive Order worried immigrants about their future in America.<sup>30</sup> Non-immigrants and citizens of the United States believed President Trump would continue to withdraw federal support for this cultural exchange. Many believed this would not be the last of his attempts to crack down on immigration in the United States.

President Trump signed another EO (Executive Order 13788) on April 18, 2017.<sup>31</sup> The order was titled *Buy American and Hire America*. This was of huge concern specifically for F-1 and J-1 visa holders as President Trump specifically began issuing directives against skilled laborers. Section 2(b) of *Buy American and Hire America* states:

“Hire American. In order to create higher wages and employment rates for workers in the United States, and to protect their economic interests, it shall be the policy of the executive branch to rigorously enforce and administer the laws governing entry into the United States of workers from abroad, including section 212(a)(5) of the Immigration and Nationality Act.”<sup>32</sup>

Section 212(2)(5) of the Immigration and Nationality Act is titled Labor Certification and Qualifications for Certain Immigrants. This section grants the Secretary of Labor the ability to deny any “alien” attempting to perform skilled or unskilled labor access to the United States.<sup>33</sup> The Secretary of Labor can deny entry unless

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<sup>30</sup> *Id.*

<sup>31</sup> *2017 Donald Trump Executive Orders*, Federal Register, <https://www.federalregister.gov/presidential-documents/executive-orders/donald-trump/2017>.

<sup>32</sup> *Buy American and Hire American*, Federal Register, <https://www.federalregister.gov/documents/2017/04/21/2017-08311/buy-american-and-hire-american>.

<sup>33</sup> INA § 212(a)(5), <http://www.visalaw.com/wp-content/uploads/INA212.pdf>.



there are not sufficient workers or the employment of the alien will not affect the wages and working conditions.<sup>34</sup> The section gives potential exemptions to an alien who is a “member of the teaching profession” or “has exceptional ability in the sciences or the arts.”<sup>35</sup>

Section 5 of Executive Order 13788 is titled *Ensuring the Integrity of the Immigration System* in Order to “Hire America.”<sup>36</sup> This section directs the Secretary of State, the Attorney General, the Secretary of Labor, and the Secretary of Homeland Security to revise the current immigrations laws and propose new laws to protect the American workers.<sup>37</sup>

Not only have President Trump’s Executive Orders created a harsher environment for immigrants in the United States, the Department of State's change in policy has also had a monumental impact on immigrants applying for visas. In summer 2019, the Department of State modified its Foreign Affairs manual guidelines.<sup>38</sup> This modification changed the existing language to instruct offices to become harsher in assessing applicant’s plans. Officers can no longer be flexible in considering the unique circumstances of an applicant’s visa.

### **August 8, 2018 Policy Memorandum from USCIS**

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<sup>34</sup> *Id.*

<sup>35</sup> *Id.*

<sup>36</sup> *2017 Donald Trump Executive Orders*, Federal Register, <https://www.federalregister.gov/documents/2017/04/21/2017-08311/buy-american-and-hire-american>.

<sup>37</sup> *Id.*

<sup>38</sup> *USCIS Changes Policy on Accrual of Unlawful Presence for Nonimmigrant Students and Exchange Visitors*, Ogletree, Deakins, Nash, Smoak & Stewart (2018), <https://ogletree.com/insights/2018-05-14/uscis-changes-policy-on-accrual-of-unlawful-presence-for-nonimmigrant-students-and-exchange-visitors/>.

In addition to Executive Orders 13768 and 13788, the policy memorandum from the USCIS on August 8, 2018 has created a major impact on J-1 and F-1 visa holders and applicants. The policy memorandum changed the trigger for unlawful presence. Unlawful presence is defined as “presence in the United States after the expiration of the authorized period of stay.”<sup>39</sup> Before the changing regulations, immigrants who overstayed their visa did not immediately begin accruing unlawful presence according to INA 212(a)(9)(B).<sup>40</sup> Unless the USCIS found a violation or an immigration judge ordered the non-immigrant to be deported, unlawful presence was not triggered.<sup>41</sup>

In August 2018, the USCIS changed their policy. Non-immigrants in the United States with F, J, or M visas who failed to maintain their “non-immigrants” status before August 9, 2018 started accruing unlawful presence automatically on August 9, 2018.<sup>42</sup> The policy also instructed “F, J, or M nonimmigrants begin accruing unlawful presence, due to a failure to maintain his or her status on or after August 9, 2018, on the earliest of any of the following.”<sup>43</sup> The memorandum then listed four ways a F-1 or J-1 visa holder could fail to maintain status:

“The day after the F, J, or M nonimmigrant no longer pursues the course of study or the authorized activity, or the

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<sup>39</sup> *USCIS Changes Policy on Accrual of Unlawful Presence for Nonimmigrant Students and Exchange Visitors*, Ogletree, Deakins, Nash, Smoak & Stewart (2018), <https://ogletree.com/insights/2018-05-14/uscis-changes-policy-on-accrual-of-unlawful-presence-for-nonimmigrant-students-and-exchange-visitors/>.

<sup>40</sup> *Id.*

<sup>41</sup> *Id.*

<sup>42</sup> *Policy Memorandum*, U.S. Department of Homeland Security and U.S. Citizenship and Immigration Services (August 9, 2018), <https://www.uscis.gov/sites/default/files/USCIS/Laws/Memoranda/2018/2018-08-09-PM-602-1060.1-Accrual-of-Unlawful-Presence-and-F-J-and-M-Nonimmigrants.pdf>.

<sup>43</sup> *Id.*

day after he or she engages in an unauthorized activity; the day after completing the course of study or program (including any authorized practical training plus any authorized grace period, as outlined in 8 CFR 214.2); the day after the Form I-94 expires, if the F, J, or M nonimmigrant was admitted for a date certain; or the day after an immigration judge orders the alien excluded, deported, or removed (whether or not the decision is appealed).”<sup>44</sup>

Nonimmigrants who accrue unlawful presence are subject to criminal sanctions and deportation depending on how many days they overstayed their authorization. Before this policy change, J-1 and F-1 visa holders who overstayed their visa would not accrue unlawful presence unless there was a court order or the visa holder had committed a crime. Due to the severity of the consequences for accruing unlawful presence, this policy change in the summer of 2018 is a radical departure from prior policies. The burden is placed on the individual despite the ease of failing to maintain status.

Depending on the severity of the time accrued, USCIS can bar an individual from reentering the United States.<sup>45</sup> The following bars to admissibility are outlined on the USCIS website:

- “3 years, if you depart the United States after having accrued more than 180 days but less than 1

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<sup>44</sup> *Policy Memorandum*, U.S. Department of Homeland Security and U.S. Citizenship and Immigration Services (August 9, 2018), <https://www.uscis.gov/sites/default/files/USCIS/Laws/Memoranda/2018/2018-08-09-PM-602-1060.1-Accrual-of-Unlawful-Presence-and-F-J-and-M-Nonimmigrants.pdf>.

<sup>45</sup> *Unlawful Presence and Bars to Admissibility*, U.S. Citizenship and Immigration Services, <https://www.uscis.gov/legal-resources/unlawful-presence-and-bars-admissibility>.

- year of unlawful presence during a single stay and before the commencement of removal proceedings;
- 10 years, if you depart the United States after having accrued one year or more of unlawful presence during a single stay, regardless of whether you leave before, during, or after removal proceedings; or
  - Permanently, if you reenter or try to reenter the United States without being admitted or paroled after having accrued more than one year of unlawful presence in the aggregate during one or more stays in the United States.”<sup>46</sup>

These bars on admission to the United States can have severe consequences. For example, if a student falls below the required credit limit to be a full time student, they automatically fall out of status the day this happens. If not corrected during the semester, by the time the student re-enters the University the next semester, the student can easily accrue 180 days of unlawful presence. This would result in the student being banned from the United States for more than three years. The concern is not as much for the consequences, but the ease of falling out of status.

### **F-1 and J-1 Lapse in Status**

Although it is easy to claim that a J-1 or F-1 visa holder should be able to maintain their status, there are many reasons why their status may lapse. One of the triggers for unlawful presence to begin accruing is “the day after the F, J, or M nonimmigrant no longer pursues the course of study or the authorized activity.”<sup>47</sup> A student may be considered “no longer pursuing the course of study”

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<sup>46</sup> *Unlawful Presence and Bars to Admissibility*. U.S. Citizenship and Immigration Services, <https://www.uscis.gov/legal-resources/unlawful-presence-and-bars-admissibility>.

<sup>47</sup> *Id.*

if they have to take a semester off or fall below the required credit level in college. This drop in course credit could happen due to an illness, mental health issue, a family emergency, or taking a part time job to support their education. Due to the new policy, a student falling below the required credit level will automatically start the clock on unlawful presence in the United States the day after they fall below the credit level. This can have dire consequences for the student and the university they are attending.

Students with a J-1 or F-1 visa can start accruing unlawful presence even through no fault of their own, i.e. a clerical or reporting error. Accrual can start when a student who is approved for work has worked past his or her approved hours. An error in a university's registrar system or dropping a class and not adding a class quick enough can result in a J-1 and F-1 student to fail to maintain status. With these visas held by young students, the possibility for an error either on their part or another's part remains likely. Despite whether or not the failure to maintain status is the visa holder's fault, the importance simply lies in the ease of falling out of status.

With the ambiguity in a lapse in status, many J-1 and F-1 visa holders are not aware that they have accrued unlawful presence in the United States. The major issue is that the unlawful presence is not initiated by any official determination.<sup>48</sup> When a J-1 or F-1 visa holder fails to maintain status, it often can go unnoticed by both the government and the individual. Unlawful presence begins accruing whether or not an individual documents the day because the USCIS has the ability to backdate the violation or failure to maintain status.<sup>49</sup> This change in policy makes monitoring status extremely difficult, but at the same time incredibly convenient for the USCIS.

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<sup>48</sup> Stuart Anderson, *U.S.C.I.S. Policy Change Could Bar Many International Students*, Forbes (2018), <https://www.forbes.com/sites/stuartanderson/2018/06/01/uscis-policy-change-could-bar-many-international-students/#6e0b15c21600>.

<sup>49</sup> *Id.*

The policy also makes curing the unlawful presence very difficult. The individual can either leave the United States and re-apply for a visa after the fact, or risk deportation and a ban on returning.<sup>50</sup> Either option has dire consequences if the government has recorded the unlawful presence. The other option is to file for reinstatement to cure the unlawful presence, but this is at the discretion of the USCIS.<sup>51</sup>

The accrual of unlawful presence can also affect the individual's family members. Currently, the new policy extends unlawful presence to dependent family members.<sup>52</sup> A dependent over the age of 18 begins accruing unlawful presence the day that their parent or guardian starts accruing presence.<sup>53</sup>

Despite the ease of falling out of status, several large universities are fighting back against the change in immigration policies. Similar to sanctuary cities, universities thrive on the cultural exchange of students. In 2017, the Cornell University President wrote to the community regarding the White House's rescission of the DACA program.<sup>54</sup> President Martha Pollack wrote that DACA students "were brought to this country before they had a choice in the matter, have grown up here, and are succeeding here despite significant challenges and obstacles. I

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<sup>50</sup> Stuart Anderson, *U.S.C.I.S. Policy Change Could Bar Many International Students*, Forbes (2018), <https://www.forbes.com/sites/stuartanderson/2018/06/01/uscis-policy-change-could-bar-many-international-students/#6e0b15c21600>.

<sup>51</sup> Stuart Anderson, *U.S.C.I.S. Policy Change Could Bar Many International Students*, Forbes (2018), <https://www.forbes.com/sites/stuartanderson/2018/06/01/uscis-policy-change-could-bar-many-international-students/#6e0b15c21600>.

<sup>52</sup> *Id.*

<sup>53</sup> *Id.*

<sup>54</sup> *Statement from President Martha E. Pollack on White House rescission of DACA Program*, Cornell University (2017), <https://www.facebook.com/notes/cornell-university/statement-from-president-martha-e-pollack-on-white-house-rescission-of-daca-prog/10155536377430132/>.

believe they deserve a chance to fulfill their dreams, and this action has the potential to extinguish those dreams.”<sup>55</sup>

Further, to protect her students, the memo then declared, “it is neither the university’s practice nor expectation to function as an agent of the federal government regarding enforcement of federal immigration laws.” She also pledged the continuation of DACA funding so students could finish their education despite the government’s decision. Lastly, she promised commitment to Cornell University’s founding principles: “we support our students in their quest to pursue their education and achieve their dreams.”<sup>56</sup>

Despite the new policy memorandum threatening the J-1 and F-1 students, there is hope. As seen only two years ago, universities and other academic programs are fighting to support their students and the cultural diversity fostered by these programs.

The new policy memorandum on August 9, 2018 not only changed the trigger for unlawful presence in the United States. The change in policy creates far-reaching effects into the United States’ economy and overall innovation. The administration threatens the certainty of both the J-1 and F-1 visas. Individuals applying for these visas as well as employers supporting the visas may no longer pursue these options due to these uncertainties, especially if another country offers opportunities without the risk.

### **Policy Memorandum’s Impact on U.S.**

On a larger scale, the policy impacts larger systems in the United States such as STEM employment. STEM is a sector of employment that incorporates science, technology, engineering, and math.

Based on the theme of executive orders signed by President Trump as well as his running platform, the Trump Administration believes that immigrants steal American jobs and drive down

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<sup>55</sup> *Id.*

<sup>56</sup> *Id.*

wages. This could not be further from the truth. Legal immigration creates a positive influx of jobs and wealth to the United States.

The New American Economy published a study in 2011 of the top Fortune 500 companies and found that “more than 40 percent had at least one founder who was an immigrant or the child of an immigrant.”<sup>57</sup> These businesses included Google, Amazon, Tesla, Kohl’s, and Apple.<sup>58</sup> The Fortune 500 companies founded by immigrants or children of immigrants are estimated to employ over 1 million people.<sup>59</sup> When looking at the growth of Amazon from the time of this study until present day, Amazon alone employs over a half of a million people.<sup>60</sup> Also, immigrants are estimated to have created twenty percent of small businesses in the United States.<sup>61</sup> Through this cursory look, immigrants are creating jobs for other Americans.

Proponents of the Trump Administration focus on jobs micro level, analyzing the specific jobs that immigrants are stealing. Immigrants, both illegal and legal, do “make up a large

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<sup>57</sup> *Immigrant Founders of the 2017 Fortune 500*, Forbes, <http://startupsusa.org/fortune500/>.

<sup>58</sup> Anthony Davies and James Harrigan, *The Economic Case for Immigration*, U.S. News (2018), <https://www.usnews.com/opinion/economic-intelligence/articles/2018-02-06/from-an-economic-and-civic-standpoint-immigrants-are-good-for-society>.

<sup>59</sup> *Id.*

<sup>60</sup> Seth Fiegerman, *Amazon now has more than 500,000 employees*, CNN Business (2017), <https://money.cnn.com/2017/10/26/technology/business/amazon-earnings/index.html>.

<sup>61</sup> Anthony Davies and James Harrigan, *The Economic Case for Immigration*, U.S. News (2018), <https://www.usnews.com/opinion/economic-intelligence/articles/2018-02-06/from-an-economic-and-civic-standpoint-immigrants-are-good-for-society>.



share of agricultural works- accounting for half or more of some types of farm laborers.”<sup>62</sup>

Despite these statistics, at a macro level, immigrants (both illegal and legal) do not steal American jobs. The Center for Immigration Studies declared, “there are no occupations in the United States in which a majority of workers are illegal immigrants.”<sup>63</sup> Although immigrants make up a large share of the work force in agricultural jobs, “all agricultural workers together constitute less than 1 percent of the American work force.”<sup>64</sup> Also, the work forces that seem to be overwhelmed with immigrants actually consist of a majority of the work force being native born. These occupations include maids and housekeepers, taxi drivers, butchers, grounds maintenance workers, construction laborers, and janitors.<sup>65</sup>

Furthermore, J-1 and F-1 visa holders contribute to the economy as nonimmigrants. For example, F-1 visa holders pay for their education from their personal funds, their family, or a combination of the two.<sup>66</sup> In the F-1 category of visas alone, each student will pay the entire tuition bill and living expenses, which can be very steep in colleges in the United States. As college students, F-1 visa holders are paying their way, contributing to the economy, and paying taxes to the same extent as American college students.

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<sup>62</sup> Steve A. Camarota, et. al. *There are No Jobs Americans Won't Do: A detailed look at immigrants (legal and illegal) and natives across occupations*. Center for Immigration Studies, <https://cis.org/Report/There-Are-No-Jobs-Americans-Wont-Do>.

<sup>63</sup> *Id.*

<sup>64</sup> *Id.*

<sup>65</sup> *Id.*

<sup>66</sup> Forrest G. Read IV, *Major Change in USCIS Policy on Accrued Unlawful Presence Likely to Impact F, M, and J Status Holders*, Immigration Blog (2018), <https://www.globalimmigrationblog.com/2018/05/major-change-in-uscis-policy-on-accrued-unlawful-presence-likely-to-impact-f-m-and-j-status-holders/>.

One primary aspect that President Trump has failed to recognize is the inherent worth of immigrants coming to the United States to contribute to research and business. In a study by the Brookings Institute, a non-profit public policy organization, in combination with the Hamilton Project, researchers concluded that immigrants contribute immeasurably to innovation in the United States.<sup>67</sup> Immigrants are more likely to work in STEM fields and get advanced degrees compared to American citizens.<sup>68</sup> The STEM fields generate much of the innovation in the United States as the STEM category in this study includes researchers in science, technology, engineering, and mathematics.

Out of all the software engineers in the United States, thirty-eight percent are immigrants. Additionally, out of all the physicians in the United States, twenty-eight percent are immigrants. What happens when you threaten that work force? Legal immigrants are accepted into STEM fields because they represent the best and brightest. The question is not simply replacing numbers with American citizens.

The STEM fields that will suffer from a threatened visa program will see a decrease in quality and progress. Legal immigrants bring talent and a unique perspective that is not easily replaced. For example, a Brookings student illustrated that immigrants generate more patentable technologies than native-born citizens.<sup>69</sup> Brookings also noted that immigrants have a higher chance of becoming “Nobel laureates in physics, chemistry, and physiology or medicine” as compared to American citizens.<sup>70</sup>

A notable Rutgers study entitled “The Real Evidence About the STEM Workforce” highlighted a problem with policy makers

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<sup>67</sup> Ryan Nunn, Jimmy O'Donnell, and Jay Shambaugh, *A dozen facts about immigration*, Brookings (2018), <https://www.brookings.edu/research/a-dozen-facts-about-immigration/>.

<sup>68</sup> *Id.*

<sup>69</sup> *Id.*

<sup>70</sup> *Id.*

failing to understand immigration.<sup>71</sup> The difference lies in immigrants who are “pulled” to the United States as compared to those who are “pushed.”<sup>72</sup> Immigrants are “pulled” to the United States as particularly high skilled workers are recruited in STEM fields. Immigrants are “pushed” into the United States as a result of inhospitable conditions in their home country. Immigrants, such as F-1 and J-1 visa holders contribute vastly more to our country because they are “pulled.” In concluding the paper, Salzman emphasized the following:

“The achievements by these and other truly innovative individuals who often reached success through different and unexpected routes should be seen as the strength of the fluidity of the U.S. education and career system. They should also be seen as coming from a broadly focused immigration policy and investment in the domestic workforce, rather than from finding narrow substitutions for the domestic workforce.”<sup>73</sup>

Since J-1 and F-1 visa applicants are comprised mostly of students, researchers, and individuals with degree seeking professional training, compromising their ability to remain in the United States has an overwhelmingly negative effect on their contributions to innovation. Individuals granted visas to the United States might not be able to finish their research if they fail to maintain status and accrue unlawful presence. Additionally, research institutions may not be willing to extend visas on the basis

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<sup>71</sup> Salzman, Hal. *What Shortages? The Real Evidence About the STEM Workforce*. Issues in Science and Technology (Summer 2013), 58-67. Retrieved from [doi:10.7282/T3JS9S2T](https://doi.org/10.7282/T3JS9S2T).

<sup>72</sup> *Id.* at 65.

<sup>73</sup> *Id.* at 66.

that research projects will not be finished if their researchers are deported or not allowed to return. If this talent pool is excluded, institutions will either search for less talented individuals or not have enough talent to pursue certain research opportunities. Not only are the STEM fields affected, but health care in the United States may also suffer from the USCIS policy changes on August 9, 2018.

International medical students attend school in the United States with a F-1 visa.<sup>74</sup> Once medical students graduate, J-1 visas allow students to complete their residency in the United States.<sup>75</sup> Similar to the problem with visa holders working in STEM, both the visa holder and the employer are at a greater risk due to the policy changes. Medical school in the United States is four years and residency can range from three to five years. Medical schools and hospitals are taking a risk in admitting students to their programs because of the uncertainty of visas. Some residency programs only admit one student per year. If the student is half way through their program and unfortunately starts accruing unlawful presence due to a circumstance outside their control, the hospital loses their investment. The resident can be deported or barred from returning from the United States for years. Therefore, it may be safer to recruit U.S. citizens. In this circumstance, the health care system is deprived of valuable talent.

A *New York Times* article emphasizes the problem in stating that President Trump is “shutting out the nation’s leading scholars who contribute billions of dollars to the economy in the U.S., staff its leading research support, its most high-skilled jobs, and contribute to the president’s own goal of strengthening the pipeline to science, technology, mathematics and engineering

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<sup>74</sup> Kate Sheridan, *US research and health care rely on international workers. Here are the visas that make it happen*, STAT (2017), <https://www.statnews.com/2017/01/31/visas-doctors-scientists-patients/>.

<sup>75</sup> *Id.*

jobs.”<sup>76</sup> As a vendetta that started against immigration as a whole, Trump’s inability to recognize the worth of immigration may threaten the nation he claims he is protecting. Although not an outright ban, the policy changes severely compromise the security J-1 and F-1 visa holders have in their work in the United States.

The new policy memorandum threatens our nation's ability to secure brilliant minds and technological advances. As a researcher in the South Dakota School of Mines and Technology, Dr. Vanessa Braband claims that eighty percent of her colleagues are international students.<sup>77</sup> With the uncertainties F-1 and J-1 visa holders face, many of Dr. Braband's colleagues do not feel that they can safely return to their families because they most likely will not be able to return to their research.<sup>78</sup> Many international students feel that if they were to leave the United States, their ability to return for their work remains uncertain. Thus, Forbes emphasizes that because legal immigrants are “not welcomed by the U.S., they are becoming our direct competition elsewhere, due to such misguided immigration policies.”<sup>79</sup>

The new policy memorandum issued on August 9, 2018 along with the stance of the Trump Administration severely compromises the J-1 and F-1 visa holders in this country. With the uncertainty, it is unclear how many will pursue these visas and risk accruing unlawful presence and even a ban on their admission to the United States in the future. Thus, many prior holders of these visas may find it more beneficial to attend university and other

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<sup>76</sup> Eric L. Green, *Trump’s Crackdown on Students who overstay visas rattles higher education*, New York Times (May 24, 2018), <https://www.nytimes.com/2018/05/24/us/politics/trump-crackdown-student-visas.html>.

<sup>77</sup> Andy J. Semotiuk, *Foreign Students To Deal With Uncertainties Under New U.S. Immigration Policy*, Forbes (June 13, 2018), <https://www.forbes.com/sites/andyjsemotiuk/2018/06/13/raising-the-bar-on-international-students-new-uscis-policy-looks-to-target-college-students/#389883355fb2>.

<sup>78</sup> *Id.*

<sup>79</sup> *Id.*

education programs outside the United States. The loss in innovation in the United States is incalculable at this point in time, but with current projections on how much J-1 and F-1 visa holders contribute to the United States, the loss could be devastating.